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IN THE

# Supreme Court of the United States

October Term 1955

No. 170

IN THE MATTER

OF

Proceedings for an Arrangement Under Chapter XI of the Bankruptcy Act of

GENERAL STORES CORPORATION,

*Debtor-Petitioner.*

v.

MAX SHLENSKY, SECURITIES AND EXCHANGE COMMISSION, CREDITORS COMMITTEE and WAGE CLAIMANTS,

*Respondents.*

**Petition of Respondents, Wage Claimants, for Leave to File Their Brief and Brief of the Respondents, Wage Claimants, Supporting the Petition of General Stores Corporation, Debtor-Petitioner, for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit**

MAX GOLDWEBER,
*Counsel for Wage Claimants,*
160-16 Jamaica Avenue,
Jamaica, N. Y.

LOUIS J. WEINSHENKER,
*Of Counsel.*

LODER APPEAL PRESS, INC., 65 Duane Street, N. Y. C. WOrth 2-0682

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MAX SHLENSKY, SECURITIES AND EXCHANGE COMMISSION, CREDITORS COMMITTEE and WAGE CLAIMANTS,

*Respondents.*

## Petition of Respondents, Wage Claimants, for Leave to File Their Brief

The respondents, wage claimants, pray this Honorable Court for leave to serve and file their brief, annexed hereto, as respondents herein, but in support of the debtor-petitioner's petition for a writ of certiorari.

This application is necessitated by the fact that because of circumstances beyond the control of the respondents, wage claimants, the time within which to serve their brief was permitted to lapse unintentionally. Upon discovery

of the default, respondents obtained from the petitioner a stipulation extending their time to file their brief but since such stipulation was filed after the original time to serve the brief had expired, the Clerk of this Court could not accept such stipulation nor extend the time. This default was thus occasioned by an oversight in the office of one of the counsel for the respondents and was not discovered until the original time to file had expired.

During the interval, however, and before discovery of the expiration of the time within which to file the brief, respondents' brief had already been drafted.

Respondents respectfully submit that they have a substantial interest in the question sought to be presented to this Court by the petition for the writ submitted here by the debtor-petitioner.

The respondents are 174 former employees and wage earners of the debtor with claims aggregating approximately $248,000, of which almost $90,000 represent claims entitled to priority under the provisions of Section 64a of the Bankruptcy Act. These wage claimants have already been seriously prejudiced by the order of the Court of Appeals and the District Court, since by reason thereof, they have not yet been paid the amount of their priority claims. Since wage earners are, in a manner of speaking, wards of the Court by virtue of the special preferential treatment accorded them by the Act (to the extent of their priorities), the long delay has definitely injured the respondents and prejudiced their rights.

Respondents respectfully pray for the opportunity to present their side of this controversy to this Honorable Court for a fuller consideration of the claims of all interested parties and the particular merits of the position of these respondents.

Respondents further respectfully submit that the debtor petitioner is not opposed to the granting of respondents' prayer herein for leave to file their brief at this time.

Wherefore, it is respectfully prayed that leave be granted to the respondents, the wage earners, to file the brief annexed hereto to support their position as respondents herein.

Dated, New York, September 22, 1955.

Respectfully submitted,

Max Goldweber,
*Counsel for Wage Claimants,*
160-16 Jamaica Avenue,
Jamaica, N. Y.

Louis J. Weinshenker,
*Of Counsel.*

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*Respondents.*

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## Brief of the Respondents, Wage Claimants, Supporting the Petition of General Stores Corporation, Debtor-Petitioner, for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

### Statement

The wage claimants, totaling 174 in number, with total claims aggregating approximately $248,000, of which almost $90,000 represents claims entitled to priority under

the Bankruptcy Act,[1] join in the petition of General Stores Corporation for a writ of certiorari to be issued to review the judgment of the United States Court of Appeals for the Second Circuit, dated April 14, 1955, which affirmed by a divided Court the judgment of the United States District Court for the Southern District of New York, entered on March 7, 1955.

The wage earners having been made respondents herein, were duly served with copies of the petitioner's petition and have thus been made aware of the petitioner's contentions. Since the papers submitted by the petitioner fully set forth the facts and the general discussion of the law, respondents will not burden this Court with a repetition thereof but instead will restrict themselves to a discussion of their particular interests and the effect thereon of the order and judgment appealed from.

The jurisdiction and the questions presented are adequately stated in the debtor's petition.

The pertinent provisions of the statutes involved are set forth in the appendix *infra*, pages 1a to 2a.

## Respondents' Reasons for the Granting of the Writ

The 174 wage claimants who are respondents herein lost their employment upon the filing by the debtor of the petition under Chapter XI of the Bankruptcy Act by reason of the fact that the debtor has disposed of the retail stores theretofore operated by it and in which the said respondents were employed. Under the provisions of Chapter XI[2] and Section 64a of the Bankruptcy Act, these wage claimants became entitled to a priority of payment for wages not exceeding $600 each, earned by them within three

1. Sec. 64a(2), Bankruptcy Act, 11 U. S. C. A. 104a(2).

2. Sec. 702, 11 U. S. C. A. 702.

months prior to the filing of the Chapter XI petition, which took place on October 18th, 1954.

Since Section 64a of the Bankruptcy Act is made applicable by the provisions of Section 302 relating to proceedings for arrangement, these respondents, would, in an arrangement proceeding, be entitled to the priority of payment to the extent that such sum does not exceed $600 each and was earned between July 18th, 1954 and October 18th, 1954.

By the order and judgment appealed from, these respondents are completely deprived of such priority since under the provisions of Chapter X[3] of the Bankruptcy Act it is specifically provided that Section 64a of the Bankruptcy Act shall not be applicable to proceedings under Chapter X. It is thus apparent that should the debtor be compelled to resort to Chapter X, these respondents will be seriously prejudiced by the deprivation of the priority of payment to which they are otherwise entitled under Chapter XI or §64a. The wage earners, in addition to having priority claims of approximately $90,000, are also general creditors to the extent of over $150,000.

The order of the District Court (Dimock, J.) is self-executing. It provides for the dismissal of the Chapter XI proceeding unless the debtor files a voluntary petition amending its Chapter XI petition so as to comply with the requirements of Chapter X or unless creditors file an involuntary petition under Chapter X. So far, no creditors have filed an involuntary petition.

The wage earners are thus left at the mercy of the debtor or its other general unsecured creditors. It can be readily conceived that the debtor might find it to its advantage not to file an amended petition under Chapter X for reasons best known to the debtor. In such event, the

3. Sec. 102, Bankruptcy Act, 11 U. S. C. A. 502.

proceedings would be dismissed. This would leave respondents as well as other creditors back where they were prior to the filing of the Chapter XI petition. However, since it has been established that the debtor is in need of some relief which can only be afforded by some provision of the Bankruptcy Act, it might also be within the realm of possibility that the debtor might find it more advantageous to file a voluntary petition under Chapter III. Since the filing date is the measuring stick for the three month period referred to in Section 64a, it is obvious that any subsequently filed petition under any of the provisions of the Bankruptcy Act will completely defeat the rights of the wage earners.

The rights of the wage earners can only be protected by the continuation of the Chapter XI proceeding or by an adjudication of the debtor and the direction that said proceeding be thereafter continued in straight bankruptcy.

Wage earners have been under the special protection of Congress and the courts. The policy of Congress in granting priorities to wage earners has been the subject of judicial comment.

In *Blessing* v. *Blanchard*[4], the Court said:

> "Priority of payment was intended for the benefit of those who are dependent upon their wages, and who, having lost their employment by the bankruptcy, would be in need of such protection."

*In the Matter of Paradise Catering Corp.*[5], the Court said:

> "Section 64, sub. a (2) was enacted by Congress in order that workmen or servants, persons of menial position and low income, should receive a priority in bankruptcy due to the fact that they as a

4. 225 Fed. 55 (C. C. A. 9th Cir.).

5. 56 F. Supp. 974 (Southern District of New York).

class can ill afford to be classified as general creditors."

*In the Matter of Estis*[6] the Court said:

> "The intention of Congress was plainly to give special protection to a class of wage earners who generally have no substantial savings or reserves to fall back on in case of adversity and therefore cannot afford to lose."

*In the Matter of Lawsam Electric Co., Inc.*[7], Judge Learned Hand said:

> "The statute was intended to favor those who could not be expected to know anything of the credit of their employer but must accept a job as it comes, to whom the personal factor in their employment is not a practicable consideration."

It is apparent that the provisions granting priority to wage earners are the result of considerations of social policy. The courts should, therefore, in the ultimate determination of the rights of the parties, give special consideration to the Congressional policies intended by the statutory enactment. It is also important to consider the impact of the order and judgment appealed from. 174 separate and distinct family entities are affected directly and adversely by the decision. These wage earners have a vital and important stake in the affairs of General Stores Corporation. They represent a large segment of the creditors of the debtor and have already been seriously prejudiced by reason of the long delay which has ensued since the filing of the Chapter XI proceeding in the District Court on October 18th, 1954. Normally, the Arrangement

6. 67 F. Supp. 570 (District Court, New York).

7. 300 Fed. 736.

with creditors which was near consummation would have been completed by this time and the wage earners would have been paid the amount of their priorities and such amount on their general claims as the debtor might eventually have paid to compose such claims, but for the decision of the District Judge.

Since, actually, the rights of stockholders are not affected by the Chapter XI proceeding and since the debtor seeks only to compose its claims with its unsecured creditors, it is respectfully submitted that the refusal of Judge Dimock and the Court of Appeals to consider the best interests of the wage claimants, as well as the interests of other general unsecured creditors, constituted an abuse of discretion.

It is without question established from past experience that a proceeding under Chapter X for the reorganization of this company, is bound to take a considerable length of time, much much more than the proceeding under Chapter XI. During all of this time, these wage earners, many of whom spent a lifetime in the employ of the debtor, would be compelled to wait for the mere pittance which should now be theirs upon the severance of their employment.

District Judge Galston, who sat in the Court of Appeals below on the appeal from Judge Dimock's judgment, pointed out this fact very cogently in his dissenting opinion. He said:

> "The wage earners who fall among the unsecured creditors, and who are eager to have prompt payment, certainly will suffer delay if proceedings are had under Chapter 10."

To summarize the position of the respondent wage earners, it is respectfully pointed out:

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8. Petitioner's appendix, p. 7a.

1. The Chapter XI petition was filed on October 18th, 1954.

2. Each wage claimant is entitled to priority for wages earned by him between July 18th, 1954 and October 18th, 1954, not exceeding $600[9].

3. Under the order of Judge Dimock, this priority will be lost to the respondents if the debtor amends its petition to comply with the provisions of Chapter X.

4. If the debtor fails to amend, the original Chapter XI petition will be dismissed. Thereupon, the priority of payment granted to the respondents will be lost, not to be restored, even if a new petition is filed subsequently under any Chapter of the Act, since such filing will postdate by more than three months the period during which the wages were earned.

## CONCLUSION

**For the foregoing reasons, for the reasons set forth in the debtor's petition, and in the interest of those most seriously affected by the judgment and order appealed from, the writ should be granted.**

Respectfully submitted,

MAX GOLDWEBER,
*Attorney for Respondent, Wage Earners,*
160-16 Jamaica Avenue,
Jamaica, New York.

LOUIS J. WEINSHENKER,
*Of Counsel.*

September 22, 1955.

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9. It is not intended to convey the impression that each of the wage claimants is entitled to the sum of $600. A number of them have priority claims which are less than $600.

# APPENDIX

## Statutes

Pertinent provisions of the Bankruptcy Act as referred to in the brief are as follows:

Section 64a (2), 11 U. S. C. A. 104a (2) reads:

> "Sec. 64. Debts Which Have Priority. a. The debts to have priority, in advance of the payment of dividends to creditors, and to be paid in full out of bankrupt estates, and the order of payment, shall be * * * (2) wages, not to exceed $600 to each claimant, which have been earned within three months before the date of the commencement of the proceeding, due to workmen, servants, clerks, or traveling or city salesmen on salary or commission basis, whole or part time, whether or not selling exclusively for the bankrupt; * * *"

Section 302 of the Bankruptcy Act, 11 U. S. C. A. 702 reads:

> "Sec. 302. The provisions of chapters I to VII, inclusive, of this Act shall, insofar as they are not inconsistent with or in conflict with the provisions of this chapter, apply in proceedings under this chapter. For the purposes of such application, provisions relating to 'bankrupts' shall be deemed to relate also to 'debtors', and 'bankruptcy proceedings' or 'proceedings in bankruptcy' shall be deemed to include proceedings under this chapter. For the purposes of such application the date of the filing of the petition in bankruptcy shall be taken to be the date of the filing of an original petition under section 322 of this Act, and the date of adjudication

shall be taken to be the date of the filing of the petition under section 321 or 322 of this Act except where an adjudication had previously been entered."

Section 402 of the Bankruptcy Act, 11 U. S. C. A. 502 reads:

"Sec. 102. The provisions of chapters I to VII, inclusive, of this Act shall, insofar as they are not inconsistent or in conflict with the provisions of this chapter, apply in proceedings under this chapter; Provided, however, That section 23, subdivisions h and n of section 57, section 64, and subdivision f of section 70, shall not apply in such proceedings unless an order shall be entered directing that bankruptcy be proceeded with pursuant to the provisions of chapters I to VII, inclusive. For the purposes of such application, provisions relating to 'bankrupts' shall be deemed to relate also to 'debtors', and 'bankruptcy proceedings' or 'proceedings in bankruptcy' shall be deemed to include proceedings under this chapter. For the purposes of such application the date of the filing of the petition in bankruptcy shall be taken to be the date of the filing of an original petition under section 128 of this Act, and the date of adjudication shall be taken to be the date of approval of a petition filed under section 127 or 128 of this Act except where an adjudication had previously been entered."